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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA

Plaintiff,

v.

MULTISTAR INDUSTRIES, INC.

Defendant.

Civil No.

COMPLAINT

1 The United States of America (“United States”), by the authority of the  
2 Attorney General of the United States, on behalf of the United States Environmental  
3 Protection Agency (“EPA”), alleges as follows:

4 **NATURE OF ACTION**

5 1. This is a civil action for injunctive relief and civil penalties brought  
6 against Multistar Industries, Inc. (“Multistar” or “Defendant”) under Section  
7 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. 7413(b), and Section 325(c) of  
8 the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42  
9 U.S.C. § 11045(c), alleging that Defendant violated the risk management program  
10 requirements of CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and its  
11 implementing regulations at 40 C.F.R. Part 68; and the chemical inventory  
12 reporting requirements of EPCRA Section 312, 42 U.S.C. § 11022, and its  
13 implementing regulations at 40 C.F.R. Part 370.

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction over the subject matter of this action  
16 pursuant to 28 U.S.C. §§ 1331, 1345, 1355; CAA Section 113(b), 42 U.S.C.  
17 § 7413(b); and EPCRA Section 325(c)(4), 42 U.S.C. § 11045(c)(4). The Court has  
18 personal jurisdiction over the parties.

19 3. Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391(b)  
20 and (c) and 1395(a); CAA Section 113(b), 42 U.S.C. § 7413(b); and EPCRA  
Section 325(c)(4), 42 U.S.C. § 11045(c)(4), because the violations occurred in, and

1 Defendant conducts business in, this judicial district.

2 4. Authority to bring this civil action is vested in the Attorney General of  
3 the United States, pursuant to 28 U.S.C. §§ 516 and 519; CAA Sections 113(b) and  
4 305, 42 U.S.C. §§ 7413(b) and 7605; and EPCRA Sections 325(c)(4), 42 U.S.C.  
5 § 11045(c)(4).

6 **NOTICE TO STATE**

7 5. Notice of the commencement of this action has been provided to the  
8 State of Washington as provided in CAA Section 113(b), 42 U.S.C. § 7413(b).

9 **PARTIES**

10 6. Plaintiff is the United States of America, acting at the request of the  
11 EPA, an agency of the United States.

12 7. Defendant is a Washington corporation that has at all times relevant to  
13 this Complaint owned or operated a chemical storage and distribution business  
14 (“Facility”) in Othello, Washington, which has a population of approximately  
15 8,000 and is located in Adams County.

16 8. Defendant is a “person” under CAA Section 302(e), 42 U.S.C.  
17 § 7602(e); EPCRA Section 329(7), 42 U.S.C. § 11049(7); and 40 C.F.R. § 370.66.

18 **STATUTORY AND REGULATORY FRAMEWORK**

19 **CLEAN AIR ACT RISK MANAGEMENT PROGRAM REQUIREMENTS**

1           9.     Section 112(r) of the CAA, 42 U.S.C. § 7412(r), authorizes EPA to  
2 promulgate regulations and programs in order to prevent and minimize the  
3 consequences of accidental releases of certain regulated substances, including  
4 extremely hazardous substances.

5           10.    CAA Section 112(r)(7), 42 U.S.C. § 7412(r)(7), and Part 68<sup>1</sup> require  
6 the owner or operator of a stationary source at which a regulated substance is  
7 present in more than a threshold quantity in a single process to develop and  
8 implement a risk management plan (“RMP”) and program to detect and prevent or  
9 minimize accidental releases of such substances from the stationary source and to  
10 provide a prompt emergency response to any such releases in order to protect  
11 human health and the environment.

12           11.    CAA Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R.  
13 § 68.3 define “stationary source” as any buildings, structures, equipment,  
14 installations, or substance emitting stationary activities that belong to the same  
15 industrial group, are located on one or more contiguous properties, are under the  
16 control of the same person (or persons under common control), and from which an  
17 accidental release may occur. See also 40 C.F.R. § 68.3 (definition of stationary  
18 source). The definition in 40 C.F.R. § 68.3 goes on to provide that:

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19  
20 <sup>1</sup> Part 68 was revised in 2019. With a few exceptions specifically noted, the revisions only resulted in renumbering of provisions relevant to this Complaint. Citations are to the version of Part 68 currently in effect, with a notation, where applicable, to the citation in effect at the time the violation began.

1 The term stationary source does not apply to transportation, including  
2 storage incident to transportation, of any regulated substance or any other  
3 extremely hazardous substance under the provisions of this part [68]. A  
4 stationary source includes transportation containers used for storage not  
5 incident to transportation and transportation containers connected to  
6 equipment at a stationary source for loading or unloading. Transportation  
7 includes, but is not limited to, transportation subject to oversight or  
8 regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or  
9 hazardous liquid program for which the state has in effect a certification to  
10 [United States Department of Transportation (“DOT”)] under 49 U.S.C.  
11 section 60105. A stationary source does not include naturally occurring  
12 hydrocarbon reservoirs. Properties shall not be considered contiguous solely  
13 because of a railroad or pipeline right-of-way.

14 12. “Threshold quantity” is the quantity specified for regulated substances  
15 pursuant to CAA Section 112(r)(5), listed in 40 C.F.R. § 68.130 and determined to  
16 be present at a stationary source as specified in 40 C.F.R. § 68.115.

17 13. 40 C.F.R. § 68.3 defines “covered process” as a “process” that has a  
18 regulated substance present in more than a threshold quantity as determined under  
19 40 C.F.R. § 68.115.  
20

1           14. Part 68 classifies covered processes into three program levels to  
2 ensure that risk management program requirements appropriately match the size  
3 and risks of regulated processes. Program 1 is the least comprehensive, and  
4 Program 3 is the most comprehensive. 40 CFR § 68.10(f), (g) and (h).

5           15. Under 40 C.F.R. §68.10(a), except in circumstances not relevant to  
6 this action, an owner or operator of a stationary source that has more than a  
7 threshold quantity of a regulated substance in a process, as determined under 40  
8 C.F.R. § 68.115, shall comply with the requirements of Part 68 no later than the  
9 latest of the following dates: (1) June 21, 1999; (2) Three years after the date on  
10 which a regulated substance is first listed under 40 C.F.R. § 68.130; (3) The date  
11 on which a regulated substance is first present above a threshold quantity in a  
12 process; or (4) For any revisions to Part 68, the effective date of the final rule that  
13 revises Part 68.

14           16. Trimethylamine (“TMA”) is listed as a regulated substance under  
15 CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and 40 C.F.R. §§ 68.3 and 68.130,  
16 with a threshold quantity of 10,000 pounds.

17                               EPCRA SECTION 312  
18                               CHEMICAL INVENTORY REPORTING REQUIREMENTS

19           17. EPCRA establishes requirements for federal, state and local  
20 governments and industry regarding emergency planning for, and reporting on,  
hazardous and toxic chemicals.

1           18.    Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its  
2 implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a  
3 facility which is required to prepare or have available a safety data sheet (“SDS”)<sup>2</sup>  
4 for a hazardous chemical under the Occupational Safety and Health Administration  
5 (“OSHA”) Act of 1970 to prepare and submit annually by March 1 of each year a  
6 completed emergency and hazardous chemical inventory form (“Inventory Form”)  
7 to the State Emergency Response Commission (“SERC”), the appropriate Local  
8 Emergency Planning Committee (“LEPC”), and the fire department with  
9 jurisdiction over the facility, addressing each such hazardous chemical that is  
10 present at the facility at any time during the previous calendar year in amounts that  
11 meet or exceed the threshold level for that chemical.

12           19.    The Inventory Form may either be aggregate information by hazard  
13 category (“Tier I”) or specific information by chemical (“Tier II”) and must  
14 contain the information required by EPCRA Section 312(d), 42 U.S.C. § 11022(d),  
15 and 40 C.F.R. § 370.40 for all such hazardous chemicals.

16           20.    The OSHA Hazard Communication Standard (“OSHA Standard”), 29  
17 C.F.R. § 1910.1200, requires employers to provide information to their employees  
18 about hazardous chemicals to which they are exposed by means of, inter alia, an  
19 SDS. 29 C.F.R. § 1910.1200(b). This regulation applies to any chemical which is

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<sup>2</sup> Referred to under EPCRA Section 312 as a “Material Data Safety Sheet,” and now referred to under the regulations as a “Safety Data Sheet.”

1 known to be present in the workplace in such a manner that employees may be  
2 exposed under normal conditions of use or in a foreseeable emergency.

3 21. With certain exceptions not relevant here EPCRA Section 312(c),  
4 42 U.S.C. § 11022(c), and 40 C.F.R. § 370.66 provide that “hazardous chemical”  
5 means any hazardous chemical as defined under OSHA regulations at 29 C.F.R. §  
6 1910.1200(c).

7 22. OSHA regulations at 29 C.F.R. § 1910.1200(c) define “hazardous  
8 chemical” as any chemical which is classified as a physical hazard or a health  
9 hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not  
10 otherwise classified.

11 23. An “extremely hazardous substance” is a subset of “hazardous  
12 chemicals” and is defined at 40 C.F.R. § 370.66 as a substance listed in 40 C.F.R.  
13 Part 355, Appendix A or B.

14 24. 40 C.F.R. § 370.10(a)(1) provides that the threshold quantity that  
15 triggers reporting obligations under EPCRA Section 312 for an extremely  
16 hazardous substance is 500 pounds, or the threshold planning quantity, as listed in  
17 40 C.F.R. Part 355, Appendix A or B, whichever is lower, at a facility at any one  
18 time.

19 25. 40 C.F.R. § 370.10(a)(2) provides that the threshold quantity that  
20 triggers reporting obligations under EPCRA Section 312 for a hazardous chemical



1 that is not an extremely hazardous substance is 10,000 pounds at a facility at any  
2 one time, unless the hazardous chemical is gasoline or diesel fuel at a retail gas  
3 station.

4 26. Under EPCRA Section 327, 42 U.S.C. § 11047, the reporting  
5 requirements of EPCRA Section 312 do not apply to the transportation, including  
6 the storage incident to such transportation, of any substance or chemical subject to  
7 EPCRA, including the transportation and distribution of natural gas.

8 27. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R.  
9 § 370.66 define “facility” as all buildings, equipment, structures, and other  
10 stationary items located on a single site or on contiguous or adjacent sites and  
11 which are owned or operated by the same person (or by any person which controls,  
12 is controlled by, or under common control with, such person). The regulatory  
13 definition goes on to provide that “facility” includes manmade structures, as well  
14 as all natural structures in which chemicals are purposefully placed or removed  
15 through human means such that it functions as a containment structure for human  
16 use. 40 C.F.R. § 370.66.

17 28. 40 C.F.R. § 370.66 defines “SERC” as the State Emergency Response  
18 Commission for the state in which the facility is located, except when the facility is  
19 located in Indian Country.  
20

1           29.   40 C.F.R. § 370.66 defines “LEPC” as the Local Emergency Planning  
2 Committee appointed by the SERC.

3           30.   TMA is a hazardous chemical as defined at 29 C.F.R. § 1910.1200(c)  
4 and is on the list of chemicals regulated by OSHA as hazardous chemicals. See  
5 “Guidance for Hazard Determination for Compliance with the OSHA Hazard  
6 Communication Standard (29 CFR 1910.1200).”

7           31.   The OSHA Standard requires an SDS to be prepared or made  
8 available for TMA.

9           32.   TMA is not an extremely hazardous substance listed in 40 C.F.R. Part  
10 355, Appendix A or B. Therefore, the reporting threshold for TMA is 10,000  
11 pounds.

## 12                                   **GENERAL ALLEGATIONS**

### 13                                   **The Defendant and the Facility**

14           33.   Defendant has at all relevant times been the “owner or operator” (as  
15 those terms are defined in CAA Section 112(a)(9), 42 U.S.C. § 7412(a)(9), and  
16 EPCRA Section 312, 42 U.S.C. § 11022) of the Facility located at 101 West Fir  
17 Street, Othello, Washington 99344.

18           34.   Defendant accepts chemicals, including TMA, by railcar and/or truck  
19 at the Facility, stores the chemicals on site at the Facility, and then sells and/or  
20 distributes the chemicals to third parties.

1           35. The Washington SERC is established pursuant to EPCRA Section  
2 301(a), 42 U.S.C. § 11001(a).

3           36. The Washington State Department of Ecology is responsible for  
4 managing and maintaining records required to be submitted under EPCRA to the  
5 Washington SERC by facilities in Washington State.

6           37. The Adams County LEPC is the local emergency planning committee  
7 established pursuant to EPCRA Section 301(c), 42 U.S.C. § 11001(c), for Adams  
8 County by the Washington SERC, and is responsible for managing and  
9 maintaining records required to be submitted under EPCRA to the LEPC by  
10 facilities in Adams County, Washington.

11           38. Adams County Fire District No. 5 (“Fire Department”) is responsible  
12 for responding to emergency situations within the City of Othello, including at the  
13 Facility, and has jurisdiction over the Facility.

14           39. Defendant’s ammonia storage and distribution process has been  
15 subject to CAA Section 112(r)(7) and 40 C.F.R. Part 68 since June 21, 1999.

16           40. Defendant has filed RMPs identifying its ammonia storage  
17 distribution process as a covered process since approximately 2004.

18           41. In January 2019, EPA learned that, as of September 7, 2018,  
19 Defendant had on site at the Facility a railcar filled with TMA and appeared to be  
20 unloading the TMA into a truck.

42. Subsequent investigations by EPA revealed that more than 10,000 pounds of TMA had been on site at the Facility since some time in 2017.

## TMA Covered Process

43. From some time in 2017 to the present, numerous tank railcars containing TMA have been and continue to be delivered to a private railroad track (referred to as a “private rail siding”) at the Facility.

44. Once delivered to the Facility, the tank railcars containing TMA are disconnected from motive power.

45. Defendant uses a transloader, associated transfer hoses, and related equipment to transfer TMA from the tank railcars to trucks for delivery to a third party.

46. From some time in 2017 to the present, Defendant transferred and continues to transfer TMA from tank railcars located at the Facility into trucks for delivery of the TMA to a third party on numerous occasions.

47. Defendant has at all relevant times been the “owner or operator” (as those terms are defined in CAA Section 112(a)(9), 42 U.S.C. § 7412(a)(9), and EPCRA Section 312, 42 U.S.C. § 11023) of the tank railcars containing TMA while the railcars are located at the Facility, as well as the transloader, associated transfer hoses, trucks, and related equipment used to store and transfer TMA to trucks and the trucks used to deliver TMA to a third party.

1           48. The tank railcars containing TMA are “transportation containers used  
2 for storage not incident to transportation” within the meaning of the definition of  
3 “stationary source” in 40 C.F.R. § 68.3 for at least some time while at the Facility.

4           49. The tank railcars containing TMA are “transportation containers  
5 connected to equipment at a stationary source for loading or unloading” within the  
6 meaning of the definition of “stationary source” in 40 C.F.R. § 68.3 while the  
7 TMA is being transferred from the tank railcars to trucks at the Facility.

8           50. The tank railcars containing TMA are not under active shipping  
9 papers for at least some time while at the Facility.

10          51. The tank railcars containing TMA are not in “storage incident to  
11 transportation” within the meaning of 40 C.F.R. § 68.3 for at least some time while  
12 at the Facility.

13          52. The tank railcars containing TMA are not in “storage incident to such  
14 transportation” within the meaning of EPCRA Section 327, 42 U.S.C. § 11047, for  
15 at least some time while at the Facility.

16          53. When TMA is being transferred from the tank railcars to trucks at the  
17 Facility, the tank railcars containing TMA, the transloader, the trucks, and other  
18 related equipment can be, and at times are, interconnected and thus constitute a  
19 single “process” (“TMA storage and distribution process”), as defined in 40 C.F.R.  
20 § 68.3.

1           54. TMA was first present at the Facility above 10,000 pounds in the  
2 TMA storage and distribution process sometime in 2017, and this covered process  
3 became subject to the requirements of Part 68 at that time.

4           55. At all relevant times, Defendant's TMA storage and distribution  
5 process has been and continues to be a "covered process" as defined in 40 C.F.R.  
6 § 68.3, and subject to 40 C.F.R. Part 68 ("TMA Covered Process").

7           56. On June 6, 2019, Defendant filed an updated RMP that identifies the  
8 TMA Covered Process as a Program 3 covered process with a maximum capacity  
9 of 156,988 pounds of TMA, well above the threshold quantity of 10,000 pounds in  
10 a single process.

11           57. Defendant filed revised EPCRA Section 312 Inventory Forms for the  
12 Facility that included TMA for reporting year 2017 with the SERC, the Adams  
13 County LEPC, and the Fire Department on approximately June 6, 2019, reporting  
14 that the Facility had a maximum inventory of 156,988 pounds of TMA and an  
15 average inventory of 156,988 pounds of TMA during calendar year 2017.

16           58. Defendant filed revised EPCRA Section 312 Tier II Inventory Forms  
17 for the Facility that included TMA for reporting year 2018 with the SERC, the  
18 Adams County LEPC, and the Fire Department on approximately June 6, 2019,  
19 reporting that the Facility had a maximum inventory of 696,380 pounds of TMA,  
20 and an average inventory of 156,988 pounds of TMA during calendar year 2018.

1           59. Defendant filed EPCRA Section 312 Inventory Forms for the Facility  
2 for reporting year 2019 that included TMA with the SERC, the Adams County  
3 LEPC, and the Fire Department on approximately January 29, 2020, reporting that  
4 the Facility had a maximum inventory of 1,413,000 pounds of TMA and an  
5 average inventory of 628,000 pounds of TMA.

6           60. Defendant filed EPCRA Section 312 Inventory Forms for the Facility  
7 for reporting year 2020 that included TMA with the SERC, the Adams County  
8 LEPC, and the Fire Department on approximately February 16 or 17, 2021,  
9 reporting that the Facility had a maximum inventory of 1,102,892 pounds of TMA  
10 and an average inventory of 628,000 pounds of TMA.

11           61. Defendant's TMA Covered Process is subject to the OSHA Process  
12 Safety Management requirements in 29 C.F.R. § 1910.119.

13           62. Defendant's TMA Covered Process is a Program 3 covered process.

14           63. Based on Defendant's most recent RMP filing, a "worst-case release"  
15 as defined in 40 C.F.R. § 68.3 from its TMA Covered Process, based on an  
16 inventory of 156,988 pounds of TMA, would affect approximately 914 people in  
17 the vicinity of the Facility.

18           64. Based on the operations conducted at the Facility, an "accidental  
19 release" (as defined in CAA Section 112(r)(2)(A), 42 U.S.C. § 7412(r)(2)(A), and  
20 40 C.F.R. § 68.3) of TMA may occur from the Facility.





1 provided in 40 C.F.R. § 68.42. In addition, the owner or operator of a Program 2  
2 or 3 covered process shall comply with 40 C.F.R. §§ 68.20 to 68.42 for all such  
3 covered processes.

4 70. The owner or operator of a Program 2 or Program 3 covered process  
5 shall analyze and report in its RMP specified worst-case release scenarios resulting  
6 from an accidental release of the regulated toxic or flammable substances under  
7 worst-case conditions defined in 40 C.F.R. § 68.22 and shall also identify and  
8 analyze at least one alternative release scenario for each regulated toxic substance  
9 held in covered processes and at least one alternative release scenario to represent  
10 all flammable substances held in covered processes as specified in 40 C.F.R.  
11 § 68.28, all in the manner specified in 40 C.F.R. §§ 68.20 to 68.42.

12 71. In response to an EPA Information Request issued to Defendant on  
13 March 1, 2019 (“March 2019 Information Request”) requesting any worst-case  
14 release scenarios, alternative release scenarios, or off-site consequence analyses  
15 conducted for the Facility with respect to TMA, Defendant submitted to EPA an  
16 off-site consequence analysis dated May 24, 2019.

17 72. Defendant failed to conduct worst-case release scenarios resulting  
18 from an accidental release of TMA from its TMA Covered Process under worst-  
19 case conditions and to identify and analyze at least one alternative release scenario  
20 for TMA, as provided in 40 C.F.R. §§ 68.20 to 68.42, prior to accepting delivery of

1 more than 10,000 pounds of TMA in its TMA Covered Process some time in 2017,  
2 in violation of 42 U.S.C. § 7412(r)(7) and 40 C.F.R. §§ 68.20 to 68.42.

### 3 THIRD CLAIM FOR RELIEF

4 *(CAA Section 112(r): Failure to Compile All Process Safety Information and*  
5 *Conduct a Process Hazard Analysis)*

6 73. Under 40 C.F.R. § 68.65, the owner or operator of a Program 3  
7 covered process shall complete a compilation of written process safety information  
8 before conducting any process hazard analysis (“PHA”) required by Part 68. The  
9 compilation of written process safety information is to enable the owner or  
10 operator and the employees involved in operating the process to identify and  
11 understand the hazards posed by the regulated processes involving the regulated  
12 substances.

13 74. Under 40 C.F.R. § 68.65(b), (c), and (d), this process safety  
14 information shall include information pertaining to the hazards of the regulated  
15 substance in the process; the technology of the process; and the equipment in the  
16 process, with the regulation specifying for each category the specific information  
17 required to be compiled.

18 75. Under 40 C.F.R. § 68.65(d)(2), as part of the process of compiling  
19 written process safety information for equipment in the process, the owner or  
20 operator shall document that equipment complies with recognized and generally  
accepted good engineering practices (“RAGAGEP”).

1           76. Under 40 C.F.R. § 68.67, the owner or operator of a stationary source  
2 with a Program 3 covered process shall perform an initial PHA on such process  
3 that is appropriate to the complexity of the process; identifies, evaluates, and  
4 controls the hazards involved in the process; uses one or more of the  
5 methodologies specified by 40 C.F.R. § 68.67(b) that are appropriate to determine  
6 and evaluate the hazards of the process being analyzed; addresses the elements in  
7 40 C.F.R. § 68.67(c); and is performed by a team with expertise in engineering and  
8 process operations and meeting the requirements of 40 C.F.R. § 68.67(d). The  
9 owner or operator shall also promptly address the findings and recommendations  
10 of the PHA as provided in 40 C.F.R. § 68.67(e).

11           77. Under 40 C.F.R. § 68.67(g), the owner or operator shall retain PHAs  
12 and updates or revalidations for each covered process, as well as the documented  
13 resolution of recommendations described in 40 C.F.R. § 68.67(e) for the life of the  
14 process.

15           78. In light of the hazards posed by the mishandling of chemicals at  
16 industrial facilities, industry trade associations have issued standards for the  
17 storage and handling of chemicals at such facilities. For example, the Compressed  
18 Gas Association (“CGA”) has published “Standard For Maintenance Of Transfer  
19 Hoses,” 1st Ed., 2019. The American National Standards Institute (“ANSI”) and  
20 the American Society of Mechanical Engineers (“ASME”) published ANSI/ASME

1 A13.1-2015, “Scheme for the Identification of Piping Systems.” ASME has  
2 published ASME B31.3, “Process Piping,” 2016 and 2018. National Fire  
3 Protection Association (“NFPA”) 77, “Recommended Practice on Static  
4 Electricity,” addresses identification, evaluation, and control of static electric  
5 hazards for purposes of preventing fires and explosions when explosive chemicals  
6 are involved. In addition, DOT regulations govern the specifications for tank  
7 railcars, 49 C.F.R. Part 179, and tank railcar unloading, 49 C.F.R. § 174.67. These  
8 standards and guidance, which are updated from time to time, represent  
9 RAGAGEP for Defendant’s TMA Covered Process.

10 79. EPA’s March 2019 Information Request requested any process  
11 information specified in 40 C.F.R. § 68.65 for any process equipment storing or  
12 containing TMA and any PHA for TMA conducted pursuant to or meeting the  
13 requirements of 40 C.F.R. § 68.67, including any actions taken to address the  
14 findings and recommendations of such analysis.

15 80. In response to EPA’s March 2019 Information Request, Defendant  
16 submitted a June 3, 2019 “Process Hazard Analysis What-If Checklist” and  
17 process safety information for the TMA Covered Process.

18 81. The process safety information submitted by Defendant on  
19 approximately June 6, 2019, in response to EPA’s March 2019 Information  
20

1 Request did not address the following requirements of 40 C.F.R. § 68.65 for the  
2 TMA Covered Process:

- 3 a. A block flow diagram or simplified process flow diagram for the  
4 TMA Covered Process that shows the transfer hose connection to  
5 the tank trailer trucks for unloading the TMA from the tank railcar.  
6 See 40 C.F.R. § 68.65(c)(1)(i).
- 7 b. Process chemistry. See 40 C.F.R. § 68.65(c)(1)(ii).
- 8 c. Safe upper and lower limits for items such as temperatures,  
9 pressures, flows, or compositions. See 40 C.F.R. § 68.65(c)(1)(iv).
- 10 d. An evaluation of the consequences of deviations from safe upper  
11 and lower limits. See 40 C.F.R. § 68.65(c)(1)(v).
- 12 e. Materials of construction for pressure relief valves, hoses, and tank  
13 railcars. See 40 C.F.R. § 68.65(d)(1)(i).
- 14 f. Relief system design and basis for pressure relief valves. See 40  
15 C.F.R. § 68.65(d)(1)(iv).
- 16 g. Design codes and standards employed. See 40 C.F.R.  
17 § 68.65(d)(1)(vi).
- 18 h. Material and energy balances. See 40 C.F.R. § 68.65(d)(1)(vii).
- 19 i. Safety systems, such as interlocks, detection, or suppression  
20 systems. See 40 C.F.R. § 68.65(d)(1)(viii).

1           j. Documentation that the equipment in the TMA Covered Process  
2           complies with RAGAGEP. See 40 C.F.R. § 68.65(d)(2).

3           82. As of the date of this Complaint, Defendant has not submitted to EPA  
4 the process safety information identified in Paragraph 81 above.

5           83. As of the date of this Complaint, Defendant has not submitted to EPA  
6 information showing that it has resolved in a timely manner all recommendations  
7 in its June 3, 2019 PHA.

8           84. Defendant failed to timely complete a compilation of all required  
9 written process safety information before conducting the PHA required by  
10 40 C.F.R. § 68.67 for the TMA Covered Process, in violation of 42  
11 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.65(c) and (d). Based on information and  
12 belief, these violations are continuing.

13           85. Defendant failed to timely conduct a PHA meeting the requirements  
14 of 40 C.F.R. § 68.67(a), (b), (c), and (d) for its TMA Covered Process and failed to  
15 promptly address the findings and recommendations of its PHA, in violation of  
16 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.67(a), (b), (c), (d), and (e). Based on  
17 information and belief, the violation of 40 C.F.R. § 68.67(e) is continuing.

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FOURTH CLAIM FOR RELIEF

*(CAA Section 112(r): Failure to Develop and Implement  
Written Operating Procedures, Conduct Training, and  
Establish and Implement Mechanical Integrity Procedures)*

86. Under 40 C.F.R. § 68.69(a), the owner or operator of a Program 3 covered process shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address the operating phases identified in that section, as well as specified operating limits, safety and health considerations, and safety systems and their functions. Under 40 C.F.R. § 68.69(c), the owner and operator shall certify annually that its operating procedures are current and accurate.

87. Under 40 C.F.R. § 68.71(a)(1), each employee presently involved in operating a Program 3 covered process, and each employee before being involved in operating a newly assigned Program 3 covered process, shall be trained in an overview of the process and in the operating procedures as specified in 40 C.F.R. § 68.69.

88. Under 40 C.F.R. § 68.71(c), the owner or operator of a Program 3 covered process shall ascertain that each employee involved in operating the process has received and understood the training required by 40 C.F.R. § 68.71 and

1 shall prepare a record which contains the identity of the employee, the date of  
2 training, and the means used to verify that the employee understood the training.

3 89. Under 40 C.F.R. § 68.73(a) and (b), the owner or operator of a  
4 Program 3 covered process shall establish and implement written procedures to  
5 maintain the on-going integrity of pressure vessels and storage tanks, piping  
6 systems (including piping components such as valves), relief and vent systems and  
7 devices, emergency shutdown systems, controls (including monitoring devices and  
8 sensors, alarms, and interlocks), and pumps (collectively, “subject process  
9 equipment”).

10 90. Under 40 C.F.R. § 68.73(c), the owner or operator of a Program 3  
11 covered process shall train each employee involved in maintaining the on-going  
12 integrity of process equipment in an overview of that process and its hazards and in  
13 the procedures applicable to the employee’s tasks to assure that the employee can  
14 perform the job tasks in a safe manner.

15 91. Under 40 C.F.R. § 68.73(d)(1) through (3), the owner or operator of a  
16 Program 3 covered process shall perform inspections and tests on subject process  
17 equipment using procedures that follow RAGAGEP at a frequency consistent with  
18 applicable manufacturers’ recommendations and good engineering practices, and  
19 more frequently if determined to be necessary by prior operating experience.  
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92. Under 40 C.F.R. § 68.73(d)(4), the owner or operator of a Program 3 covered process shall document each inspection and test that has been performed on subject process equipment, which documentation shall identify the date of the inspection or test, the name of the person performing the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

93. EPA's March 2019 Information Request requested any written operating procedures for unloading, loading, or storing of TMA at the Facility, including procedures addressing normal operations, emergency shutdowns, and emergency operations; documentation of any training conducted at the Facility with respect to operating any TMA process; written procedures for maintaining the ongoing integrity of specified TMA process equipment; and documentation of any inspections, maintenance activities, or testing conducted on the TMA process equipment at the Facility.

## Operating Procedures

94. In response to EPA's March 2019 Information Request, Defendant submitted an operating procedure dated June 1, 2018, and an update to that procedure dated October 10, 2018.

95. The operating procedures submitted to EPA by Defendant:

- a. Do not address all safety systems and their functions as required by 40 C.F.R. § 68.69(a)(4);
- b. Do not give clear instructions for safely conducting activities, as required by 40 C.F.R. § 68.69(a); and
- c. Were not certified as current and accurate at the time they were submitted to EPA.

96. As of the date of this Complaint, Respondent has not submitted to EPA operating procedures that address the deficiencies identified in Paragraph 95 above.

97. Defendant failed to have in place operating procedures meeting the requirements of 40 C.F.R. § 68.69(a) prior to first unloading TMA from tank railcars into trucks some time in 2017 and failed to certify its operating procedures as current and accurate at least annually, in violation of 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.69(a) and (c). Based on information and belief, these violations are continuing.

### *Training*

98. In response to EPA's March 2019 Information Request, Defendant provided some records of some employee training for the TMA Covered Process.

99. Based on the records provided, the training did not timely train employees in the operating procedures for the TMA Covered Process, as required by 40 C.F.R. § 68.71(a)(1).

100. In addition, the training records provided do not give any indication that operators were trained in emergency operations, including shutdown, and safe work practices applicable to the employee's job tasks for the TMA Covered Process, as required by 40 C.F.R. § 68.71(a) and (c).

101. As of the date of this Complaint, Defendant has not submitted to EPA information demonstrating that it is meeting the training requirements of 40 C.F.R. § 68.71(a) and (c) for the TMA Covered Process.

102. Defendant failed to timely provide training meeting the requirements of 40 C.F.R. § 68.71(a) and (c) for its employees involved in operating the TMA Covered Process, in violation of 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.71(a) and (c). Based on information and belief, these violations are continuing.

### *Mechanical Integrity*

103. In response to EPA’s March 2019 Information Request, Defendant submitted an undated document entitled “Written Procedures for Maintaining Ongoing Integrity of Process Equipment – TMA” (“TMA MI procedure”) and a document entitled “Transfer Facility Record of Maintenance and Inspection” (“TMA MI record”) for the TMA Covered Process.

1           104. The TMA MI procedure does not contain written procedures for  
2 maintaining the ongoing mechanical integrity of pressure relief devices (relief  
3 devices) and transfer hoses (piping systems), as required by 40 C.F.R. § 68.67(b).

4           105. The TMA MI record does not include the following information  
5 required by 40 C.F.R. § 68.67(d)(4): (1) the serial number or other identifier of the  
6 equipment on which the inspection or test was performed; (2) a description of the  
7 inspection or test performed; or (3) results of the inspection or test.

8           106. Based on records provided, Defendant did not conduct, or keep  
9 records of, inspections and tests at the frequency called for in its TMA MI  
10 procedure.

11           107. As of the date of this Complaint, Defendant has not submitted to EPA  
12 information demonstrating that it is meeting the mechanical integrity requirements  
13 of 40 C.F.R. § 68.73(b) and (d) or the training requirements of 40 C.F.R.  
14 § 68.73(c).

15           108. Defendant failed to have and implement written procedures for  
16 maintaining the ongoing integrity of subject process equipment meeting the  
17 requirements of 40 C.F.R. § 68.73(b) and (d), to adequately document each  
18 inspection and test performed on subject process equipment, and to train each  
19 employee involved in maintaining the on-going integrity of process equipment in  
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1 violation of 42 U.S.C. § 7412(r)(7) and 40 C.F.R. § 68.73(b), (c) and (d). Based on  
2 information and belief, these violations are continuing.

3 FIFTH CLAIM FOR RELIEF

4 *(CAA Section 112(r): Failure to Meet Emergency Response Requirements)*

5 109. Under 40 C.F.R. § 68.90(a), the owner or operator of a stationary  
6 source with a Program 2 or Program 3 covered process shall comply with the  
7 emergency response program requirements in 40 C.F.R. § 68.95 unless its  
8 employees will not be responding to accidental releases of regulated substances  
9 and the owner or operator complies with the requirements of 40 C.F.R. § 68.90(b)  
10 for nonresponding stationary sources. The requirements of 40 C.F.R. § 68.90(b)  
11 for “nonresponding stationary sources” include ensuring, for stationary sources  
12 with any regulated toxic substances (such as ammonia) held in a process above the  
13 threshold quantity, that the stationary source is included in the community  
14 emergency response plan developed under 42 U.S.C. § 11003 and that, beginning  
15 September 21, 2018, the owner or operator performs the annual emergency  
16 response coordination activities required under 40 C.F.R. § 68.93.

17 110. Effective September 21, 2018, as provided in 40 C.F.R. § 68.93, the  
18 owner or operator of a stationary source with a Program 2 or Program 3 covered  
19 process shall coordinate response needs with local emergency planning and  
20 response organizations at least annually to determine how the stationary source is

1 addressed in the community emergency response plan and to ensure that local  
2 response organizations are aware of the regulated substances at the stationary  
3 source, their quantities, the risks presented by covered processes, and the resources  
4 and capabilities at the stationary source to respond to an accidental release of a  
5 regulated substance. See also 40 C.F.R. § 68.93(a). Under 40 C.F.R. § 68.93(b),  
6 coordination shall include providing to the local emergency planning and response  
7 organizations the stationary source's emergency response plan if one exists;  
8 emergency action plan; updated emergency contact information; and other  
9 information necessary for developing and implementing the local emergency  
10 response plan.

11 111. The owner or operator shall document coordination with local  
12 authorities, including the names of individuals involved and their contact  
13 information (phone number, email address, and organizational affiliations); dates  
14 of coordination activities; and nature of coordination activities, as provided in 40  
15 C.F.R. § 68.93(c).

16 112. EPA's March 2019 Information Request requested "A description of  
17 any coordination and communications the Facility has had with local emergency  
18 planning and response agencies regarding TMA stored at the Facility, including  
19 whether the Facility is included in the community emergency response plan.  
20 Provide supporting documentation of this coordination with respect to TMA,

1 including copies of any communications and the dates on which such coordination  
2 and communications were conducted.”

3 113. Based on Defendant’s response to EPA’s March 2019 Information  
4 Request, Defendant did not timely meet the requirements for a “non-responding  
5 stationary source” under 40 C.F.R. § 68.90(b) with respect to its TMA Covered  
6 Process because Defendant did not timely coordinate response needs with the  
7 Adams County LEPC to ensure the LEPC was aware of the amount of TMA at the  
8 Facility, the risk presented by TMA at the Facility, and Defendant’s resources and  
9 capabilities at the Facility to respond to an accidental release of TMA, or timely  
10 provide the LEPA a copy of Defendant’s Emergency Action Plan, as required by  
11 40 C.F.R. § 68.93 (introductory paragraph) and (b).

12 114. Such failures violated 42 U.S.C. § 7412(r)(7) and 40 C.F.R.  
13 §§ 68.90(b) and 68.93.

#### 14 SIXTH CLAIM FOR RELIEF

15 *(EPCRA Section 312: Failure to timely submit 2017 Inventory Forms)*

16 115. The Facility is a “facility” as defined in EPCRA Section 329(4),  
17 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

18 116. Defendant had more than 10,000 pounds of TMA present at the  
19 Facility at any one-time during calendar year 2017.  
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1           117. Defendant failed to submit to the Washington SERC a completed  
2 EPCRA Section 312 Inventory Form for calendar year 2017 that included TMA  
3 until approximately June 6, 2019.

4           118. Defendant failed to submit to the Adams County LEPC a completed  
5 EPCRA Section 312 Inventory Form for calendar year 2017 that included TMA  
6 until approximately June 6, 2019.

7           119. Defendant failed to submit to the Fire Department a completed  
8 EPCRA Section 312 Inventory Form for calendar year 2017 that included TMA  
9 until approximately June 6, 2019.

10          120. Defendant failed to submit to the Washington SERC, the Adams  
11 County LEPC, and the Fire Department completed EPCRA Section 312 Inventory  
12 Forms for calendar year 2017 that included TMA by March 1, 2018, in violation of  
13 EPCRA Section 312(a), 42 U.S.C. § 11022(a) and 40 C.F.R. §§ 370.40 to 370.45.

14                           SEVENTH CLAIM FOR RELIEF

15           *(EPCRA Section 312: Failure to timely submit 2018 Inventory Form for TMA)*

16          121. Defendant had more than 10,000 pounds of TMA present at the  
17 Facility at any one-time during calendar year 2018.

18          122. Defendant failed to submit to the Washington SERC a completed  
19 EPCRA Section 312 Inventory Form for calendar year 2018 that included TMA  
20 until approximately June 6, 2019.



123. Defendant failed to submit to the Adams County LEPC a completed EPCRA Section 312 Inventory Form for calendar year 2018 that included TMA until approximately June 6, 2019.

124. Defendant failed to submit to the Fire Department a completed EPCRA Section 312 Inventory Form for calendar year 2018 that included TMA until approximately June 6, 2019.

125. Defendant failed to submit to the Washington SERC, the Adams County LEPC, and the Fire Department completed EPCRA Section 312 Inventory Forms for calendar year 2018 that included TMA by March 1, 2019, in violation of EPCRA Section 312(a), 42 U.S.C. § 11022(a) and 40 C.F.R. §§ 370.40 to 370.45.

## Enforcement

126. Under CAA Section 113(b), 42 U.S.C. § 7413(b), the United States may bring a civil action against any person for a permanent or temporary injunction or to assess and recover a civil penalty whenever such person has violated or is in violation of any requirement or prohibition of the CAA referenced therein, including Section 112(r), 42 U.S.C. § 7412(r).

127. CAA Section 113(b), 42 U.S.C. § 7413(b), authorizes a civil penalty of not more than \$25,000 per day for each violation. The statutory maximum civil penalty has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461), as amended by the Debt

1 Collection Improvement Act of 1996 (31 U.S.C. § 3701), and most recently, by the  
2 Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015  
3 (28 U.S.C. § 2461), as provided in 40 C.F.R. Part 19.

4 128. Pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b), and 40 C.F.R.  
5 Part 19, Defendant is liable for a civil penalty for the CAA violations alleged in  
6 this Complaint of not more than \$102,638 per day per violation.

7 129. Under EPCRA Section 325(c), 42 U.S.C. § 11045(c), the United  
8 States may bring an action to assess and collect a penalty in the United States  
9 District Court for the district in which the violator resides or in which the violator's  
10 principal place of business is located.

11 130. EPCRA Section 325(c)(1) and (3), 42 U.S.C. § 11045(c)(1) and (3),  
12 authorize a civil penalty of up to \$25,000 per day for each such violation and states  
13 that each day a violation continues constitutes a separate violation. The statutory  
14 maximum civil penalty has been adjusted over time as required by the Federal  
15 Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461), as amended  
16 by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701), and most  
17 recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements  
18 Act of 2015 (28 U.S.C. § 2461), as provided in 40 C.F.R. Part 19.

1           131. Pursuant to EPCRA Section 325(c), 42 U.S.C. § 11045(c), and 40  
2 C.F.R. Part 19, Defendant is liable for a civil penalty for the EPCRA violations  
3 alleged in this Complaint of up to \$58,328 per day for each violation.

4                                   **PRAYER FOR RELIEF**

5           WHEREFORE, Plaintiff, the United States, respectfully requests that this  
6 Court grant the following relief:

- 7           1. Enter judgment finding Defendant is liable for the foregoing  
8 violations;
- 9           2. Assess civil penalties against Defendant in amounts not to exceed  
10 those provided pursuant to CAA Section 113(b), 42 U.S.C. § 7413(b),  
and EPCRA Section 325(c), 42 U.S.C. § 11045(c);
- 11           3. Order Defendant to take appropriate steps as may be necessary to  
remedy any ongoing violations;
- 12           4. Award the United States its costs in this action; and
- 13           5. Grant such other and further relief as the Court deems just and proper.

14                               Respectfully submitted this 31st day of August, 2021.

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1 TODD KIM  
2 Assistant Attorney General  
3 Environment and Natural Resources  
4 Division

5 /s/ David L. Dain  
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